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the request of and for the benefit of a railroad company, the company may properly be made to pay the entire expense, not only of the underpass, but the necessary approaches.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 244.]

12. Evidence (§ 20 (2)*)—Judicial Notice—War Conditions—Railroads.—On an appeal from the decision of the state Corporation Commission relating to the construction of an underpass for a county highway across a railway, the appellate court will take judicial notice of the difficulty of obtaining materials for railroad construction because of war.

Appeal from State Corporation Commission.

Action by the Commonwealth, on the relation of the State Corporation Commission, against the Southern Railway Company. From an order of the State Corporation Commission, defendant appeals. Reversed, with directions.

R. B. Tunstall, of Norfolk, and *Geo. E. Walker*, of Charlottesville, for appellant.

R. T. W. Duke, Jr., of Charlottesville, and the *Attorney General*, for the Commonwealth.

SMOOT et al. v. Bibb et al.

Nov. 14, 1918.

[97 S. E. 355.]

1. Deeds (§ 133 (2)*)—Estate Conveyed—Contingent Remainder.—Under deed conveying property to a son and his family during the life of the son, the property at son's death "to pass and descend to the children, or the children of such as may die," the children of the son took a contingent remainder.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 829, 830.]

2. Descent and Distribution (§ 12*)—Land Acquired by Purchase and Not by Descent.—Under deed conveying property to a son and his family during his life, property at his death to pass to his children, or issue of such as may die, where the son's daughter predeceased him, her surviving daughter, who died when seven years old, took as a purchaser, and her interest in the property would not, under Code 1904, § 2556, go to surviving children of son, but to her father, surviving parent, under section 2548.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 603.]

3. Deeds (§ 133 (1)*)—Construction—Rules.—The rule that the

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

law prefers vested to contingent remainders, and that courts will always construe a remainder to be vested rather than contingent, has no application, where language of deed is not doubtful.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 823.]

Error to Circuit Court, Amherst County.

Action by Bland Bibb and others, infants, by their next friend and guardian, against Mary B. Smoot and others. Verdict and judgment for plaintiffs, and defendants bring error. Affirmed.

Wm. Kinckle Allen and *O. L. Evans*, both of Amherst, for plaintiffs in error.

Volney E. Howard, of Lynchburg, and *L. Grafton Tucker*, of Lovington, for defendants in error.

SOUTHERN RY. CO. *v.* POWELL et al.

Nov. 14, 1918.

[97 S. E. 357.]

1. Eminent Domain (§ 319*)—Rights Acquired—Embodiment of "Understanding" in Report.—Where a railroad sought to condemn land, and commissioners added to report allowing for land taken that it was made with understanding that the railroad was to build crossing for owners, "understanding" was equivalent of "agreement," which under Eminent Domain Act, cl. 20, may be embodied in the report, and, if confirmed, will constitute a covenant running with the land.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Understanding.* For other cases, see 5 Va.-W. Va. Enc. Dig. 114.]

2. Eminent Domain (§ 319*)—Rights Acquired—Agreement of Parties.—Cases coming within Eminent Domain Act, cl. 20, should receive favorable consideration from courts, and where one interpretation of language of commissioners' report would give it effect as agreement under statute, and the other nullify it, the former should be preferred.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 106-7.]

Error to Circuit Court, Nelson County.

Proceeding by notice of motion for judgment by *W. A. Powell* and others against the Southern Railway Company. To review judgment for plaintiffs, defendant brings error. Affirmed.

J. T. Coleman, Jr., of Lynchburg, for plaintiff in error.

C. J. Campbell, of Amherst, and *S. B. Whitehead*, of Lovington, for defendants in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.